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10 UNITED STATES BANKRUPTCY COURT
11 DISTRICT OF OREGON

12 In re

13 SeaPort Airlines, Inc.,

14 Debtor.

Case No. 16-30406-rld11

**OBJECTION OF FOUNTAIN
VILLAGE DEVELOPMENT, LLC TO
TRUSTEE'S FINAL REPORT AND
PROPOSED PAYMENT OF
CHAPTER 7 ADMINISTRATIVE
EXPENSE CLAIMS FOR
PROFESSIONAL FEES AND
EXPENSES**

18 Fountain Village Development, LLC ("FVD") objects to the Trustee's Final
19 Report and proposed payments in respect of Chapter 11 administrative expense claims for
20 professional fees and expenses for the reason that the Trustee has improperly applied the
21 provisions of paragraph 5 of the Final Order Authorizing Debtor to Obtain Unsecured Credit
22 [ECF No. 114] (the "Financing Order").

23 The Financing Order authorized Debtor to borrow up to \$1 million from FVD
24 during the term of the Chapter 11 case. Pursuant to Section 364(b) of the Bankruptcy Code,
25 FVD was granted an administrative expense priority allowable under Section 503(b)(1) of the
26

1 Bankruptcy Code with respect to all loans and advances made pursuant to the Financing
2 Order. Paragraph 5 of the Financing Order states, in relevant part:

3 FVD's unsecured administrative expense claim under Sections
4 364(b) and 503(b)(1) shall be subject and subordinate to * * *
5 (b) unpaid administrative expense claims in an amount not to
6 exceed \$100,000 for professional fees and expenses incurred
prior to the entry of any order converting this case to a case
under Chapter 7 of the Bankruptcy Code and allowed pursuant
to 11 U.S.C. § 330.

7 On May 24, 2018, the Trustee filed a Final Report [ECF No. 580]. Exhibit C
8 to the Final Report sets forth the Trustee's analysis of claims, including the Chapter 11
9 administrative expenses. On May 25, 2018, the Trustee filed a Notice of Trustee's Final
10 Report and a Summary of Trustee's Final Report [ECF No. 581] ("Final Report Summary").
11 The Final Report and Final Report Summary reflect the following:

- 12 • \$602,872.69 is available for distribution on Chapter 11 administrative
13 expense claims.
- 14 • The Chapter 11 administrative expense claims total \$3,638,466.90.
- 15 • FVD's allowed administrative expense claim ("FVD's Administrative
16 Claim") is \$771,127.80, or 21.1938% of all Chapter 11 administrative
expense claims.
- 17 • The total of all allowed Chapter 11 administrative claims for
18 professional fees and expenses ("Chapter 11 Professional Fees") is
\$543,941.32, or 14.9497% of all Chapter 11 administrative expense
claims.
- 19 • Absent the subordination provisions of paragraph 5 of the Financing
20 Order, a pro rata distribution to all Chapter 11 administrative expense
21 claims would result in a distribution of \$127,771 to FVD and \$81,318
to Chapter 11 Professional Fees.

22 In his analysis, the Trustee takes the incorrect position that the Financing
23 Order "required that the first \$100,000 payable to Fountain Village would instead be paid to
24 the UST for unpaid quarterly fees and applied towards the Chapter 11 professionals." The
25 Trustee subtracts \$100,000 from FVD's distribution and distributes an additional \$100,000 to
26 Chapter 11 Professional Fees.

1 The subordination contained in paragraph 5 of the Financing Order is not an
2 agreement to pay \$100,000 to Chapter 11 Professional Fees. It is an agreement to
3 subordinate to the payment of \$100,000 to Chapter 11 Professional Fees. Subordination is
4 different than payment. It does not mean that FVD will pay \$100,000. Rather, it means that
5 FVD will not receive a distribution until Chapter 11 Professional Fees have been paid
6 \$100,000. The appropriate application of paragraph 5 of the Financing Order is as follows:

- 7 • All Chapter 11 administrative claims are of equal priority except that
8 FVD will not receive a distribution until Chapter 11 Professional Fees
9 have received \$100,000.
- 10 • As dollars are distributed, Chapter 11 Professional Fees will receive
11 both their 14.9497% of each dollar and FVD's 21.1938% of each
12 dollar until Chapter 11 Professional Fees have been paid \$100,000.
- 13 • That threshold will be reached when \$276,675 has been distributed.
14 36.1435% of \$276,675 is \$100,000. The subordination has been
15 satisfied because \$100,000 has been distributed to Chapter 11
16 Professional Fees.
- 17 • \$326,198 remains to be distributed. FVD will be distributed
18 21.1938%, or \$69,134.
- 19 • Chapter 11 Professional Fees will be distributed 14.9497%, or
20 \$48,766. A total of \$148,766 will be distributed to Chapter 11
21 Professional Fees.

22 DATED this 18th day of June, 2018.

23 TONKON TORP LLP

24 By /s/ Albert N. Kennedy
25 Albert N. Kennedy, OSB No. 821429
26 Attorneys for Fountain Village
Development, LLC

030230/00055/9064329v1

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OBJECTION OF FOUNTAIN VILLAGE DEVELOPMENT, LLC TO TRUSTEE'S FINAL REPORT AND PROPOSED PAYMENT OF CHAPTER 7 ADMINISTRATIVE EXPENSE CLAIMS FOR PROFESSIONAL FEES AND EXPENSES** was served on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

In addition, the parties indicated as "Non-ECF" on the attached List of Interested Parties were served by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each party's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below.

DATED this 18th day of June, 2018.

TONKON TORP LLP

By /s/ Albert N. Kennedy
Albert N. Kennedy, OSB No. 821429
Attorneys for Fountain Village
Development, LLC

LIST OF INTERESTED PARTIES

In re SeaPort Airlines, Inc.
U.S. Bankruptcy Court Case No. 16-30406-tmb7

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